# House of Representatives



General Assembly

File No. 669

January Session, 2019

Substitute House Bill No. 5418

House of Representatives, April 17, 2019

The Committee on Government Administration and Elections reported through REP. FOX of the 148th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

# AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE STATE CONTRACTING STANDARDS BOARD.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- Section 1. Section 4-215 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2019*):
  - (a) Each personal service agreement executed on or after [July 1, 1994] October 1, 2019, and having a cost of more than twenty thousand dollars but not more than fifty thousand dollars and a term of not more than one year shall be based on competitive negotiation or competitive quotations, unless the state agency purchasing the personal services determines that a sole source purchase is required and applies to the [secretary] State Contracting Standards Board for a waiver from such requirement and the [secretary] board grants the waiver. [Not later than March 1, 1994, the secretary shall] The State Contracting Standards Board may adopt guidelines for determining the types of services that may qualify for such waivers. The qualifying

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services shall [include, but not] be limited to, (1) services for which the 14 15 cost to the state of a competitive selection procedure would outweigh 16 the benefits of such procedure, as documented by the state agency, (2) 17 proprietary services, (3) services to be provided by a contractor 18 mandated by the general statutes or a public or special act, and (4) 19 emergency services, including services needed for the protection of life 20 or health. The State Contracting Standards Board shall post any 21 requests for a waiver received under this section on the State 22 Contracting Portal.

- (b) The [secretary] <u>board</u> shall immediately notify the Auditors of Public Accounts of any application that the [secretary] <u>board</u> receives for approval of a sole source purchase of audit services and give the auditors the opportunity to review the application to advise the [secretary] <u>board</u> as to whether such services are necessary and, if so, whether such services could be provided by said auditors.
- Sec. 2. Section 4-216 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2019*):
  - (a) No state agency may execute a personal service agreement having a cost of more than fifty thousand dollars or a term of more than one year, without the approval of the secretary. A state agency may apply for an approval by submitting the following information to the secretary: (1) A description of the services to be purchased and the need for such services; (2) an estimate of the cost of the services and the term of the agreement; (3) whether the services are to be on-going; (4) whether the state agency has contracted out for such services during the preceding two years and, if so, the name of the contractor, term of the agreement with such contractor and the amount paid to the contractor; (5) whether any other state agency has the resources to provide the services; (6) whether the agency intends to purchase the services by competitive negotiation and, if not, why; and (7) whether it is possible to purchase the services on a cooperative basis with other state agencies. The secretary shall approve or disapprove an application within fifteen business days after receiving it and any

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necessary supporting information, provided if the secretary does not act within such fifteen-day period the application shall be deemed to have been approved. The secretary shall immediately notify (A) the Auditors of Public Accounts of any application which the secretary receives for approval of a personal services agreement for audit services and give said auditors an opportunity to review the application during such fifteen-day period and advise the secretary as to whether such audit services are necessary and, if so, could be provided by said auditors, and (B) the State Contracting Standards Board of any application which the secretary receives for approval of a personal services agreement where the agency does not intend to purchase the services by competitive negotiation.

- (b) Each personal service agreement having a cost of more than fifty thousand dollars or a term of more than one year shall be based on competitive negotiation or competitive quotations, unless the state agency purchasing the personal services applies to the [secretary] <u>State Contracting Standards Board</u> for a waiver from such requirement and the [secretary] <u>board</u> grants the waiver in accordance with [the] <u>any</u> guidelines adopted under section 4-215, <u>as amended by this act</u>.
- (c) The secretary may establish an incentive program for nonprofit providers of human services whose contracts with the state do not exceed one million dollars and who provide direct services to not more than one hundred fifty persons enrolled in state-funded assistance programs in specific geographical regions of the state. The incentive program may (1) allow providers who otherwise meet contractual requirements to retain a percentage of any savings realized by the providers from the contracted cost for services, (2) require that at least fifty per cent of savings retained by the providers be used to expand such services, and (3) provide that future contracted amounts from the state for the same types of services are not reduced solely to reflect savings achieved in previous contracts by such providers. For purposes of this subsection, "state-funded assistance programs" includes, but is not limited to, services provided to persons with intellectual, physical or mental disabilities or autism spectrum

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- Sec. 3. Subsection (a) of section 4e-36 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2019*):
- 85 (a) Any bidder or proposer on a state contract may contest the 86 solicitation or award of a contract, including a contract awarded after 87 the granting of any waiver from competitive bidding under section 4-88 215 or 4-216, as amended by this act, to a subcommittee of the State 89 Contracting Standards Board which shall be appointed by the 90 chairperson of the board and consist of three members, at least one of 91 whom shall be a legislative appointee. Such contest shall be submitted, 92 in writing, not later than fourteen days after such bidder or proposer 93 knew or should have known of the facts giving rise to such contest and 94 shall be limited to the procedural elements of the solicitation or award 95 process, or claims of an unauthorized or unwarranted, noncompetitive 96 selection process.
- 97 Sec. 4. Subdivision (28) of section 4e-1 of the general statutes is 98 repealed and the following is substituted in lieu thereof (*Effective* 99 October 1, 2019):
  - (28) "State contracting agency" means any executive branch agency, board, commission, department, office, institution or council, [. "State contracting agency" does not include the judicial branch, the legislative branch, including the offices of the Secretary of the State, the State Comptroller, the Attorney General, the State Treasurer [, with respect to their constitutional functions, any state agency with respect to contracts specific to the constitutional and statutory functions of the office of the State Treasurer. For the purposes of section 4e-16, "state contracting agency" includes and any constituent unit of the state system of higher education, [and for but excluding the judicial and legislative branches. For the purposes of section 4e-19, "state contracting agency" includes the State Education Resource Center, established under section 10-4q;

113 Sec. 5. Section 4e-5 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2019*):

- (a) (1) The head of each state contracting agency shall appoint an agency procurement officer. Such officer shall serve as the liaison between the agency and the Chief Procurement Officer on all matters relating to the agency's procurement activity, including, but not limited to, implementation and compliance with the provisions of statutes and regulations concerning procurement and any policies or regulations adopted by the board, coordination of the training and education of agency procurement employees and any person serving on the Contracting Standards Advisory Council;
- (2) The agency procurement officer shall be responsible for assuring that contractors are properly screened prior to the award of a contract, evaluating contractor performance during and at the conclusion of a contract, submitting written evaluations to a central data repository to be designated by the board and creating a project management plan for the agency with annual reports to the board pertaining to procurement projects within the agency.
- (b) The State Contracting Standards Board, with the advice and assistance of the Commissioner of Administrative Services, shall develop a standardized state procurement and project management education and training certification program. Such education and training certification program shall develop education, training and professional development opportunities for employees of state contracting agencies charged with procurement responsibilities. The program shall educate such employees in general business acumen and on proper purchasing procedures as established in statutes and regulations concerning procurement with an emphasis on ethics, fairness, consistency and project management. [Participation in the program] Certification shall be required of any supervisory and nonsupervisory state employees in state contracting agencies with responsibility for buying, purchasing, renting, leasing or otherwise acquiring any supplies, service or construction, including the

preparation of the description of requirements, selection and solicitation of sources, preparation and award of contracts and all phases of contract administration.

- 149 (c) The program shall include, but shall not be limited to (1) training 150 and education concerning federal, state and municipal procurement 151 processes, including the statutes and regulations concerning 152 procurement; (2) training and education courses developed in 153 cooperation with the Office of State Ethics, the Freedom of Information 154 Commission, the State Elections Enforcement Commission, the 155 Commission on Human Rights and Opportunities, the office of the 156 Attorney General and any other state agency the board determines is 157 necessary in carrying out statutes and regulations concerning 158 procurement; (3) providing technical assistance to state contracting 159 agencies and municipalities for implementing statutes and regulations 160 concerning procurement, regulations, policies and standards 161 developed by the board; (4) training to current and prospective 162 contractors and vendors and others seeking to do business with the 163 state; and (5) training and education of state employees in the area of 164 best procurement practices in state purchasing with the goal of 165 achieving the level of acumen necessary to achieve the objectives of 166 statutes and regulations concerning procurement.
  - (d) Any employee who completes the program established under subsection (b) of this section shall be [issued documentation] granted certification by the board acknowledging such employee's participation in the program. The board shall submit an annual report to the Governor and the General Assembly on the status of such program in accordance with section 11-4a.
- (e) The board shall adopt regulations, in accordance with the provisions of chapter 54, to develop and implement the [training and] education and training certification program established under subsection (b) of this section.
- 177 Sec. 6. Section 4e-6 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2019*):

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(a) The board shall appoint a Chief Procurement Auditor for a term not to exceed six years, unless reappointed pursuant to the provisions of this subsection. The Chief Procurement Auditor shall report to the board and annually be evaluated by, and serve at the pleasure of, the board. For administrative purposes only, the Chief Procurement Auditor shall be supervised by the executive director.

- (b) The Chief Procurement Auditor shall: (1) In consultation with the Auditors of Public Accounts, establish procedures for monitoring the financial and cost provisions of contracting regulations; (2) establish an anonymous hotline to receive complaints regarding procurement and investigate such complaints, as appropriate; and (3) measure and report annually on procurement process improvement.
- [(a)] (c) The [board] Chief Procurement Auditor shall conduct audits of state contracting agencies, triennially, to ensure compliance with statutes and regulations concerning procurement. In conducting each such audit, the [board] Chief Procurement Auditor shall have access to all contracting and procurement records, may interview any and all personnel responsible for contracting, contract negotiations or procurement and may enter into an agreement with the Auditors of Public Accounts to effectuate such audit.
- [(b)] (d) Upon completion of any such audit, the [board] <u>Chief Procurement Auditor</u> shall prepare and issue a compliance report for the state contracting agency. Such report shall identify any process or procedure that is inconsistent with statutes and regulations concerning procurement and indicate those corrective measures the [board] <u>Chief Procurement Auditor</u> deems necessary to comply with statutes and regulations concerning procurement requirements. Such report shall be issued and delivered not later than thirty days after completion of such audit and shall be a public record.
- Sec. 7. Subsection (a) of section 4e-7 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2019*):

(a) For cause, the State Contracting Standards Board may review, terminate or recommend to a state contracting agency the termination of any contract or procurement agreement undertaken by any state contracting agency after providing fifteen days' notice to the state contracting agency and the applicable contractor, and consulting with the Attorney General. Such termination of a contract or procurement agreement by the board may occur only after (1) the board has consulted with the contracting agency to determine the impact of an immediate termination of the contract, (2) a determination has been made jointly by the board and the contracting agency that an immediate termination of the contract will not create imminent peril to the public health, safety or welfare, (3) a vote of two-thirds of the members of the board present and voting for that purpose, and (4) the board has provided the state contracting agency and the contractor with opportunity for a hearing conducted pursuant to the provisions of chapter 54. Such action shall be accompanied by notice to the state contracting agency and any other affected party. For the purpose of this section, "for cause" means: (A) A violation of section 1-84 or 1-86e, as determined by the Citizen's Ethics Advisory Board; (B) wanton or reckless disregard of any state contracting and procurement process by any person substantially involved in such contract or state contracting agency; or (C) notification from the Attorney General to the state contracting agency that an investigation pursuant to section 4-61dd has concluded that the process by which such contract was awarded was compromised by fraud, collusion or any other criminal violation. Nothing in this section shall be construed to limit the authority of the board or Chief Procurement Auditor, as described in section 4e-6, as amended by this act.

This act shall take effect as follows and shall amend the following						
sections:						
Section 1	October 1, 2019	4-215				
Sec. 2	October 1, 2019	4-216				
Sec. 3	October 1, 2019	4e-36(a)				
Sec. 4	October 1, 2019	4e-1(28)				
Sec. 5	October 1, 2019	4e-5				

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Sec. 6	October 1, 2019	4e-6
Sec. 7	October 1, 2019	4e-7(a)

# Statement of Legislative Commissioners:

In Section 1, "July 1, 1994" was changed to "October 1, 2019" for consistency.

GAE Joint Favorable Subst.

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## **OFA Fiscal Note**

# State Impact:

Agency Affected	Fund-Effect	FY 20 \$	FY 21 \$
Higher Education Constituent	Various - Cost	Up to \$6.5	Up to \$6.8
Units		million	million
Governmental Accountability,	GF - Cost	223,907	324,141
Off.			
State Comptroller - Fringe	GF - Cost	88,400	132,158
Benefits <sup>1</sup>			

Note: Various=Various; GF=General Fund

# **Municipal Impact:** None

# Explanation

Sections 1 through 3 require purchasing agencies to apply to the State Contracting Standards Board (SCSB), instead of the OPM secretary, for PSA waivers, and receive said waivers from SCSB. These sections also restrict the SCSB's waiver authority, and allow SCSB to adopt guidelines for determining the types of PSA services that may qualify for such waivers. Finally, these sections allow bidders and proposers to contest the solicitation or award of a PSA for which SCSB grants a waiver.

The SCSB will need to hire a Chief Procurement Office (CPO) at a cost of \$86,174 in FY 20 (partial year) and \$125,297 in FY 21(full year), plus associated fringe benefit costs of \$34,219 and \$51,158, respectively. The CPO will be responsible for reviewing such PSA contracts and

<sup>&</sup>lt;sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 41.19% of payroll in FY 20 and FY 21.

determining if such contract qualifies for a waiver, as well as posting any waiver requests received on the state contracting portal.

**Section 4** results in a cost to the higher education constituent units of up to \$6.5 million in FY 20 and \$6.8 million in FY 21. The bill subjects the constituent units to the SCSB's authority and the procurement statutes for other state agencies. The bill would tighten contracting requirements for the constituent units, by among other things requiring the units to seek SCSB approval for a waiver of competitive bidding (or the units to engage in competitive bidding) for each minor purchase and applying state agency procurement statutes to special types of contracts currently exempted from typical constituent unit contracting requirements (e.g., purchasing as part of an industry partnership). The constituent units would require up to 40 additional Contract Specialists to comply with the state agency procurement statutes. The additional personnel costs are: (1) salary costs totaling approximately \$3.3 million in FY 20 and \$3.5 million in FY 21, and (2) fringe benefits costs of up to \$3.2 million in FY 20 and \$3.4 million in FY 21. <sup>2</sup> Funding may come from state General Funds and the Office of the State Comptroller, or from the constituent units' own funds (e.g., operating funds from tuition revenue).

The bill may also result in higher contracting costs, lower revenue for industry partnerships and revenue-generating contracts, and contracting delays for the constituent units. For context, in FY 18 the University of Connecticut executed an estimated 1,600 contracts totaling \$475 million, and in FY 19, the Board of Regents is projected to spend approximately \$270 million on contracts. The special types of contracts currently exempted from constituent unit contracting requirements but that under the bill would be treated as normal state contracts had a total value across the constituent units of

<sup>&</sup>lt;sup>2</sup> The fringe benefit costs for employees funded out of non-appropriated funds are charged to those funding sources, as opposed to the fringe benefit accounts within the Office of the State Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes for non-appropriated fund employees is 97.18% of payroll in FY 20 and FY 21. The fringe benefit impact reflects an upper limit as the funding source for additional personnel is unspecified.

approximately \$200 million in FY 16.

**Section 5** adds a certification requirement to the procurement and project management education and training program that SCSB must develop and administer under current law, requiring employees with procurement responsibilities in state contracting agencies to achieve certification from the program, rather than only participate in it as current law requires.

The SCSB will need to hire one Trainer at a cost of \$51,559 in FY 20 (partial year) and \$73,547 in FY 21 (full year), plus associated fringe benefit costs of \$19,961 and \$29,842, respectively. The Trainer would be responsible for aiding in the certification requirement to the procurement and project management education and training program.

Sections 6 and 7 of the bill require SCSB to appoint a chief procurement auditor (CPA). The SCSB will require funding of \$86,174 in FY 20 (partial year) and \$125,297 in FY 21 (full year), plus associated fringe benefit costs of \$34,219 and \$51,158, respectively, to hire one CPA. The CPA would be responsible for: 1) establishing procedures for monitoring the financial and cost provisions of contracting regulations, 2) establishing an anonymous hotline to receive procurement complaints, 3) investigating complaints, 4) measuring and reporting annually on procurement process improvements, and 5) conducting triennial audits of state contracting agencies to ensure compliance with procurement related statutes and regulations.

#### The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation. It is anticipated that restricting the PSA waiver authority will lead to more PSAs being competitively bid, which may result in savings to the State in the out years.

# OLR Bill Analysis sHB 5418

# AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE STATE CONTRACTING STANDARDS BOARD.

#### SUMMARY

This bill transfers, from the Office of Policy and Management (OPM) secretary to the State Contracting Standards Board (SCSB), authority for granting competitive bidding waivers for personal service agreements (PSAs) and limits the reasons for which these waivers may be granted. It subjects the offices of the attorney general, secretary of the state, state comptroller, and state treasurer and the constituent units of higher education to the board's full authority.

The bill also adds a certification component to the procurement and project management education and training program required by existing law and requires certain employees to achieve certification, rather than only participate in training. It requires SCSB to appoint a chief procurement auditor to, among other things, conduct the board's triennial audits of state contracting agencies.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2019

## §§ 1-3 — PSA WAIVERS

# Waiver Authority (§§ 1 & 2)

Under current law, PSAs costing more than \$20,000 or lasting for more than one year must be based on competitive negotiation or competitive quotations unless the purchasing agency applies for and receives a waiver from the OPM secretary allowing a sole source purchase. The bill requires purchasing agencies to instead apply for and receive these waivers from SCSB. It requires the board to post on

the state contracting portal any waiver requests it receives.

The bill shifts, from the OPM secretary to SCSB, the authority to adopt guidelines for determining the type of PSA services that may qualify for a waiver. It makes adopting these guidelines permissive for SCSB, rather than mandatory for the secretary as current law requires. It also restricts the board's waiver authority to the following services only:

- 1. those for which the cost of a competitive selection outweighs the benefits as documented by the agency,
- 2. proprietary services,
- 3. services to be provided by a contractor mandated by the general statutes or a public or special act, and
- 4. emergency services.

Under current law, the OPM secretary's waiver authority applies to other types of services beyond these four categories as she determines (see BACKGROUND).

Existing law prohibits state agencies from beginning a PSA solicitation process without the OPM secretary's prior approval if the PSA (1) costs more than \$50,000 or (2) lasts for more than one year. The bill requires the OPM secretary to immediately notify SCSB of any such application for approval if the agency does not intend to purchase the services by competitive negotiation. The bill does not require similar notification when an agency does not intend to use competitive quotation.

# Contesting an Award (§ 3)

The bill specifically allows bidders and proposers to contest the solicitation or award of a PSA for which SCSB grants a waiver. Under existing law, bidders and proposers on a state contract may contest a contract solicitation or award with SCSB, with the contest (1) limited to (a) the procedural elements of the solicitation or award process or (b)

claims of an unauthorized or unwarranted, noncompetitive selection process and (2) adjudicated by an SCSB subcommittee.

# § 4 — STATE CONTRACTING AGENCIES

Current law exempts from the definition of state contracting agency, and therefore SCSB authority, (1) the offices of the attorney general, secretary of state, state comptroller, and state treasurer with respect to their constitutional functions; (2) state agencies with respect to contracts specific to the state treasurer's constitutional and statutory functions; and (3) the constituent units of higher education for purposes other than the privatization law (see BACKGROUND). The bill subjects these agencies and the constituent units to SCSB's general authority by eliminating these exemptions. It retains existing law's exemptions for the legislative and judicial branches.

In addition to its broad authority over privatization, SCSB has authority under existing law over (1) acquisition and management of supplies, services, and construction; (2) state contracting and procurement processes and practices; and (3) contracts for the construction, reconstruction, alteration, remodeling, repair, or demolition of public buildings. SCSB is also authorized to (1) review and terminate, for cause, existing contracts undertaken by state contracting agencies and (2) disqualify a contractor, for cause, from bidding on or receiving state contracts for up to five years.

# § 5 — CERTIFICATION PROGRAM

The bill adds a certification requirement to the procurement and project management education and training program that SCSB must develop and administer under current law. It requires employees with procurement responsibilities in state contracting agencies to achieve certification from the program, rather than only participate in it as current law requires. Under the bill, SCSB must (1) grant certification to any employee who completes the program and (2) adopt implementing regulations.

## §§ 6 & 7 — CHIEF PROCUREMENT AUDITOR

The bill requires SCSB to appoint a chief procurement auditor for a term of up to six years. The auditor must (1) report to, be annually evaluated by, and serve at the pleasure of the board and (2) may be reappointed. SCSB's executive director must supervise him or her for administrative purposes only.

Under the bill, the chief procurement auditor must:

- 1. establish procedures, in consultation with the state auditors, for monitoring the financial and cost provisions of contracting regulations;
- 2. establish an anonymous hotline to receive procurement complaints and investigate them, as appropriate;
- 3. measure and report annually on procurement process improvement; and
- 4. conduct SCSB's triennial audits of state contracting agencies to ensure compliance with procurement-related statutes and regulations.

## **BACKGROUND**

## Waivers from Competitive Solicitation

PSAs are typically used by state agencies to purchase infrequent and non-routine services or end products, such as certain consulting services, technical assistance, and training. Most PSAs have competitive solicitation requirements unless the purchasing agency applies to the OPM secretary for a waiver, and the secretary grants the waiver.

In addition to the conditions prescribed in statute, OPM has used its discretionary authority to extend waiver eligibility to services that require a contractor with special capabilities or unique experience.

# Constituent Units of Higher Education

The state's constituent units of higher education are, generally, not subject to SCSB's authority, except for the privatization law. Existing

law requires SCSB to adopt regulations to apply the requirements of specified SCSB-related statutes to the constituent units (CGS § 4e-47). (To date, the board has not adopted these regulations.)

However, under existing law, several SCSB-related statutes do not become operative until the board adopts its implementing regulations. To date, SCSB has not adopted these implementing regulations; therefore, it is unclear how these statutes would apply to the constituent units.

#### Related Bills

sSB 917, reported favorably by the Government Administration and Elections Committee, subjects quasi-public agencies, including quasi-publics that provide financing to a constituent unit of higher education, to the state's privatization law by defining them as "state contracting agencies."

sSB 1041, reported favorably by the Government Administration and Elections Committee, limits PSA waivers to those conditions that are specifically prescribed in statute and eliminates the discretionary authority of the OPM secretary to grant waivers under additional conditions.

# **COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute Yea 15 Nay 0 (03/29/2019)